

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 536 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT .....Petitioner.

Versus

PATEL NANALAL RAVJIBHAI JASANI.....Respondent.

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Appearance:

Mr. R.M. Chauhan, APP for Petitioner

MR RR TRIVEDI Advocate for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 12/12/97

#### ORAL JUDGEMENT

The petitioner, by this application, prays for setting aside the order dated 13th September 1985, passed by the then learned Judicial Magistrate (F.C.), Manavadar in Criminal Case No. 18/84 on his file.

2. Shorn of unnecessary details, the case of the petitioner is that the Drug Inspector, Mr. S.A. Purohit at Junagadh filed the complaint against the opponent in connection with the offence under Section 27 of the Drugs & Cosmetics Act, 1940, before the Judicial Magistrate (F.C.) at Manavadar. At that time for the said offence

F.I.R. with the police was lodged and investigation by the police was in progress, but as the investigation was not over within reasonable time, the Drug Inspector had preferred to file the complaint directly before the court. Thereafter, it appears that during the pendency of that complaint filed by the Drug Inspector, the police, with regard to the said offence filed the chargesheet against the respondent and thus two criminal complaints for the said offence against the same opponent came to be registered in the Court of the Judicial Magistrate (F.C.). When the police had filed the chargesheet, the learned Magistrate did not prefer to register the complaint and had fixed it for hearing and order. After the chargesheet was presented, he passed necessary order below the private complaint filed by the Drug Inspector whereby he called upon the parties to submit whether the complaint lodged by the Drug Inspector should be registered in view of the chargesheet already having been filed by the police in connection with the same offence against the same opponent. Hearing the parties, he dismissed the complaint filed by the Drug Inspector. It is against that order, the present revision application has been preferred.

3. When there is a complaint and also the police report before the court in connection with the same offence against the same accused or some of the accused, what procedure has to be followed is the question that arises for consideration in this case. The relevant provision to answer the question is Section 210 of the Criminal Procedure Code. A plain reading of the section makes the picture clear. It seems, the learned Magistrate misdirected himself and misconstruing the section, erroneously held that the provision of Section 210 would apply only if there is uncertainty about filing the chargesheet by the police before the court. Sub-section (2) of Section 210 is very clear. It lays down that, if the report is made by the investigating police officer under Section 173 of the Criminal Procedure Code and on such report the court has taken the cognizance against the person who is also the accused in the complaint case, the Magistrate has to inquire into and try together both the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. What is therefore clear is that when two such complaints are before the court, both the cases are to be tried together as if they were instituted on a police report and the complaint is not to be dismissed. There is nothing in the section which provides the contingencies contemplated by the learned Magistrate. In view of this clear provision,

unequivocally it can be said that the learned Magistrate fell into error in dismissing the complaint. He ought to have, instead of dismissing the complaint, tried both the cases together and disposed the same of in accordance with law. When that has not been done; and he preferred to dismiss the complaint, it is clearly against the mandate of Section 210(2). When such clear error of law has been found, the revision application is required to be allowed and the complaint, which is dismissed, is required to be restored to file for hearing and disposal along with the police report case.

4. For the aforesaid reason, this Criminal Revision Application is allowed. The order dated 13th September, 1995 passed by the learned Judicial Magistrate (F.C.) at Manavadar, dismissing the complaint of the Drug Inspector, is hereby set aside. The complaint is restored to file with the same number and the learned Judicial Magistrate, Manavadar, is hereby directed to hear both the cases together and dispose the same of in accordance with law affording reasonable opportunity to the parties to submit. The parties are directed to appear before the Judicial Magistrate (F.C.) at Manavadar on 30th December 1997 at 11.00 a.m. so as to proceed with the matters. The learned Magistrate shall give priority and dispose these two cases of at the earliest.

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